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ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115

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February 9, 2012

Ms. Kathryn Ruemmler
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Cynthia C. Hogan
Counsel to the Vice President
Office of the Vice President
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Ms. Ruemmler and Ms. Hogan:

We write to you regarding the subpoenas for documents served on the White House Chief of Staff, then William M. Daley, and Chief of Staff to the Vice President Bruce Reed, on November 3, 2011, by the Committee on Energy and Commerce in relation to the loan guarantee issued to Solyndra, Inc., (Solyndra) by the Department of Energy (DOE).

Pursuant to Rule X of the U.S. House of Representatives, the Committee on Energy and Commerce is investigating the DOE loan guarantee issued to Solyndra. Our reasons for doing so are clear, and have been explained to you numerous times. Under the House rules, matters relating to "[e]xploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources" and the "[g]eneral management of the Department of Energy" are within the jurisdiction of this Committee. This Committee drafted the Energy Policy Act of 2005, which authorized the creation of the DOE Loan Guarantee Program. Solyndra was part of the Section 1705 loan guarantee program, which was funded in part by the American Recovery and Reinvestment Act (Recovery Act). This Committee adopted the energy-related provisions of the Recovery Act, including the Section 1705 program, in a markup on January 22, 2009.

Solyndra was the first recipient of a DOE loan guarantee in September 2009. Within one year of receiving the loan guarantee, the company experienced significant financial problems that resulted in the layoff of approximately 135 temporary and 40 full-time employees, in November 2010. Less than one year after that, the company filed for Chapter 11 bankruptcy and laid off its remaining

workforce of approximately 1,000 individuals. Solyndra is not the only portion of the DOE loan portfolio to attract significant concern; the Government Accountability Office (GAO) has issued two reports criticizing the DOE Loan Programs Office's review and approval process for applications for the Section 1705 loan guarantee program.

This information, combined with the fact that this Committee had not previously conducted any oversight of the DOE Loan Guarantee Program, prompted the Committee to open its investigation. As Committee staff has repeatedly explained to you and your staff, the Committee's investigation of the Solyndra loan guarantee directly relates to the Committee's legislative functions. The process by which this Administration awarded over half a billion dollars to Solyndra and subsequently restructured and subordinated the loan and the management of the DOE Loan Guarantee Program, including the extent of the White House's influence in the management of that program, are but a few of the important issues which are squarely within this Committee's constitutional oversight responsibilities. The facts and information the Committee uncovers as a result of this investigation will inform its ongoing oversight of the Loan Guarantee Program. This information will also inform the Committee's legislative agenda, should the Committee consider legislation to fix some of the problems identified by our investigation of the Administration's handling of the Solyndra loan guarantee. It is of the utmost importance for the Committee to fully understand how the 1705 loan guarantee program was managed and what influence the White House and other Executive Branch agencies did or did not exert in the management of that program.

It has now been more than five months since the Committee first requested documents from the White House relating to the Solyndra loan guarantee, and over three months since the Committee was forced to issue subpoenas to the Executive Office of the President and the Office of the Vice President for this information. During that time, the Committee and its staff have repeatedly sought to engage your staff in substantive discussions regarding any concerns you may have regarding the subpoenas. During these discussions, your staff has repeatedly refused to discuss even such basic information as the nature or quantity of responsive documents in your possession. Moreover, when asked to describe the basis of their concerns, your staff has simply repeated vague assertions that: 1) the subpoenas are "overly broad" and 2) somehow the documents requested by the Committee are not related to the Committee's "legitimate oversight interests." At no time have you or your staff ever explained how the subpoenas are overly broad or why the Committee's investigation into the loss of over half a billion dollars through the Department of Energy Loan Guarantee Program is not within the Committee's legitimate oversight interest.

Nonetheless, in an attempt to move the investigation forward, the Committee has repeatedly accommodated the White House in our negotiations. When your staff indicated that it would be burdensome to produce publicly available documents, such as press releases, Committee staff agreed that you would not have to produce such documents. In order to accommodate the White House's concern that searching for the requested documents would also be burdensome, the Committee repeatedly offered to discuss schedules for production and ways to prioritize the documents the Committee needed in its investigation. At your request, and in response to your complaint that the document requests in the subpoenas were overly broad, the Committee narrowed its requests for documents as set forth in the subpoenas by providing a list of eleven specific document categories to the White House Counsel's office on December 12, 2011 (Attachment A). The White House claimed that even these narrowed document request categories were too broad. Without consulting the Committee, your office unilaterally narrowed even those categories in a manner which purposefully excluded important documents and information. The White House then relied on this unilaterally

revised language as a basis for producing just 66 pages of documents to the Committee, on January 13, 2012. Those documents, and the 136 pages of documents produced by the White House on November 11, 2011, do not provide any substantive information about certain key events regarding the Solyndra loan guarantee, even though information uncovered by the Committee suggests that the White House played a role in those events.

The Administration has not reciprocated the Committee's good faith efforts to negotiate. Three months after the deadline for the production of documents, the White House still has not complied with the subpoenas. The White House has repeatedly rebuffed the Committee's efforts and has carefully selected only a very limited number of documents for production. It is clear to us that the Administration has no genuine intention of complying with the subpoenas, but rather is waging a public relations war in an effort to delay long enough to withhold from production the most relevant documents. For example, the White House continues to withhold documents that provide information about its involvement in the restructuring and subordination of the Solyndra loan guarantee, even though certain documents demonstrate that the White House approved the restructuring. The White House has not asserted any privilege to justify its refusal to produce these, and other, responsive documents. If, as the Administration has repeatedly asserted, it did nothing wrong and has nothing to hide, why not simply produce all of the documents responsive to the Committee's narrowed document requests, without further delay?

In the White House's responses to the Committee's document requests, you have routinely cited the number of documents produced by other Executive Branch agencies as support for your argument that this Committee's requests for documents from the White House are unnecessary. Your duty to respond to the Committee's subpoenas, however, is not satisfied by the production of documents by other Executive Branch agencies. None of the documents produced by DOE, the Office of Management and Budget (OMB), or the Department of the Treasury has allowed the Committee to answer some of the fundamental questions regarding the Solyndra loan guarantee. For example:

1. What was the extent of the White House's involvement in the restructuring of the Solyndra loan guarantee in late 2010 and early 2011 (and the related subordination of the taxpayer's money to two private investors)? Was the White House aware that OMB and Treasury had questioned the advisability of the restructuring?
2. Who instructed Solyndra to delay its announcement of job layoffs until after the 2010 midterm elections? Who made the decision that such a directive should be given to Solyndra? What was the extent of the White House's involvement in the discussion relating to that issue?
3. Solyndra was a small company, and just one of the twenty-seven companies that received a loan guarantee under the Section 1705 program at DOE. Why did this particular company receive so much attention from the White House, including discussions by many of the most senior advisors to the President? How did this high level of White House attention affect the management of the 1705 loan guarantee program?
4. What factors contributed to the White House's decision to go forward with a presidential visit to Solyndra's manufacturing facilities in May 2010, shortly after the company's worsening financial condition was made public in an Amended S-1 statement, and in the midst of efforts by the company to raise capital?

These are important questions that still have not been answered simply because the Administration has continued to stonewall our inquiry. Frankly, our patience is at an end. These unanswered questions go to the heart of the Committee's constitutionally mandated oversight responsibilities. Only documents and information currently in the possession of the White House will allow the Committee to fully answer these questions. Without this information, the Committee cannot complete its investigation. Further, your office's failure to comply with the Committee's requests will prevent both Congress and the Executive Branch from learning lessons that might improve the operations of the DOE Loan Guarantee Program, prevent further losses of taxpayer money, and inform the drafting of legislation that will address these matters.

Throughout our negotiations, the Committee has done its best to accommodate your concerns while also being mindful of our duty under the Constitution to conduct oversight. We appreciate that your office finally agreed on January 23, 2012, to conduct a search for the eleven narrowed document categories that Committee staff provided to you on December 12, without further revision or restriction on your part. However, rather than commence a search for all materials responsive to the eleven categories, your office proposed to search one category at a time beginning with the first category — documents relating to the conditional commitment. After agreeing to search for those materials on January 23, it took you nearly two weeks to provide approximately 300 pages of responsive materials for just one of the eleven categories of document requests. Your offices have also failed to propose any specific production schedule for the remaining ten categories of documents.

We simply will not allow the White House to endlessly delay its response to duly authorized subpoenas. The Committee has been investigating the Solyndra loan guarantee for almost one year. You have been aware of the Committee's requests for White House documents relating to the Solyndra loan guarantee for at least the last five months, and were involved in coordinating the response of the various Executive Branch agencies well before that. Your offices have already identified the appropriate White House staff whose work related to the Solyndra loan guarantee and who may possess responsive documents. In the three months since the subpoenas were served, the White House has had more than enough time to complete a meaningful search for, and production of, documents responsive to the Committee's requests.

An attachment to this letter sets forth in greater detail the comprehensive history of the Committee's negotiations with you relating to the Solyndra investigation. Together with the events we have described in this letter, this chronology demonstrates to us that the White House's efforts thus far have been dedicated primarily to delaying the Committee's investigation.

Unfortunately, relevant and duly subpoenaed documents are not the only information you are denying to Congress. OMB and the White House have thus far refused to make certain OMB employees available to the Committee in any forum, including hearings. This refusal has obstructed the Committee's ability to carry out its oversight function. While OMB initially claimed that it is "OMB policy" to provide only "supervisory" OMB personnel for interviews or as witnesses in Congressional hearings, OMB subsequently admitted that no such formal policy exists.

OMB instead offered interviews with two OMB staff members who had supervised the individuals whom the Committee had sought to interview. OMB represented that these two supervisors would be able to answer all of the Committee's questions about the agency's review of Solyndra. The Committee thus accepted OMB's offer. Unfortunately, the two supervisory employees were unable to answer the vast majority of the Committee's questions. In short, these interviews were

a poor substitute for interviews with the individuals who performed the underlying work on the Solyndra loan guarantee. Again, if there is nothing to hide, you should not have a problem allowing Committee staff to interview this small number of crucial witnesses.

For these reasons, we request that you make available certain staff in the Executive Office of the President who were involved in reviewing and monitoring the Solyndra loan guarantee and its restructuring, for interviews to be conducted by Committee staff. The names of the requested witnesses, which include three OMB employees and two White House employees, are as follows: (1) Kevin Carroll; (2) Kelly Colyar; (3) Fouad Saad; (4) Heather Zichal; and (5) Aditya Kumar. If OMB does not agree by February 17, 2012, to provide the aforementioned individuals for staff interviews, the Committee will convene a business meeting on that day to authorize the issuance of subpoenas to these individuals for their testimony in a hearing before the Subcommittee on Oversight and Investigations.

Likewise, for the reasons stated in this letter, all documents responsive to the Committee's December 12, 2011, list of prioritized document categories must be produced no later than 12:00 p.m. on February 21, 2012.

To date, you have not asserted executive privilege, so we assume this is not the basis for withholding materials responsive to the Committee's subpoenas. Vague assertions that the Committee's requests "implicate longstanding Executive Branch institutional interests," are not valid reasons for withholding responsive documents from the Committee. If you intend to claim executive privilege, or any other privilege with respect to any responsive documents, you must explicitly make such an assertion and produce a privilege log to the Committee on February 21, 2012.

Without your complete compliance with the subpoenas by February 21, you will compel us to pursue all options available to the Committee under its rules and the rules of the United States House of Representatives to address such obstructive behavior. We are fully prepared to do so.

Please do not hesitate to contact Committee staff with any questions about this letter.

Sincerely,



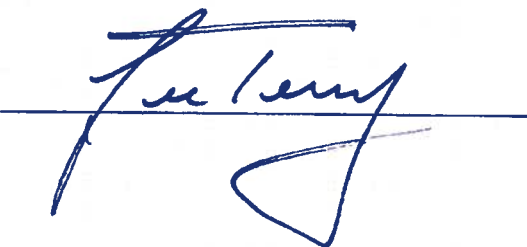
Fred Upton
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Cliff Stearns
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Joe Barton
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Mark Ozyurk

Ben Bittman

Phil King

John S.

Steve Scalise

Tim Murphy

Angela Blackman

Tom Harkin

Sue Myrick

K. Morgan Hoff

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

List of Signatories

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Joe Barton
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